

SECTION IX: TERMINATION OF EMPLOYMENT

1. **TYPES OF TERMINATION.** The Termination of Employment Flow Sheet (see Appendix Number 22 for details) may be used to help determine the appropriate type of termination to use. Any involuntary termination should be reviewed with legal counsel before termination is pursued or a resignation is accepted to ensure the employee's "due process" property rights are not violated. See Section VII: Disciplinary Action.
 - A. **Retirement.** Retirement is acceptable as long as it is truly voluntary. The purpose of Tremonton City's retirement program is to provide employees with income benefits upon completion of successful careers.
 - B. **Voluntary Resignation.** When an employee wishes to leave Tremonton City they will complete a Notice of Voluntary Resignation Form (see Appendix Number 23 for details) and present it to the Mayor, City Manager, or Department Head.
 - C. **Resignation, in Lieu of an Involuntary Termination, Agreement.** The Mayor or City Manager may conclude that an employee should be involuntarily terminated for no reason (for those employees listed in Utah Code 10-3-1105(2)) or for misconduct. If Involuntary Termination proceedings have begun, but have not been completed, and an employee suggests that they would like to voluntarily resign, the Mayor or City Manager may agree to a Resignation in Lieu of an Involuntary Termination Agreement (see Appendix Number 24 for details).
 - D. **Involuntary Termination.** The Mayor, City Manager, or Department Head, may conclude that an employee should be involuntarily terminated. The Employee Termination Notification (see Appendix Number 20 for details) will be completed.
 - E. **Reductions in Force/Layoffs.** Whenever it is necessary to reduce the number of employees in Tremonton City because of lack of work or lack of funds, Tremonton City may attempt to minimize layoffs by readjustment of personnel through reassignment of duty in other work areas. As per Utah Code 10-3-1105 employees may be terminated or transferred to a position with less remuneration with or without notice for any or no reason without any right to "due process", notice, explanation, or appeal in connection with reduction in force/layoffs.
 - F. **Medical.** The Americans with Disabilities Act (ADA) prohibits illegal discrimination by an employer against an "otherwise qualified individual with a disability." Consequently, an employee should not be terminated for medical reasons without prior consultation with legal counsel.
 - G. **Death.** If an employee of Tremonton City dies, their estate receives all pay due and any earned and payable benefits (such as payment for compensation time, annual leave, and/or sick leave) as of the date of death.

2. REQUIRED NOTICE PRIOR TO TERMINATION.

- A. Tremonton City does not have a requirement to give any prior notice to an employee before terminating their employment with the City. When Tremonton City terminates their employment, Tremonton City will determine whether any pay for unused, accrued annual leave (if applicable) or pay for vested sick leave (if applicable) will be paid to the terminated employee. (See also Section 18 2.H and 18 4.F of this manual.)
- B. Unused, accrued annual leave (if applicable) and vested sick leave (if applicable) will always be paid for terminations of employment involving Reductions in Force/Layoffs, Medicals, and Deaths in accordance with Section 18 2.H and 18 4.F of this manual.

3. TERMINATION PROCEDURES .

- A. A Notice of Voluntary Resignation Form (see Appendix Number 23 for details), signed by the employee and the Mayor, City Manager, or Department Head, may be utilized in Voluntary Resignations.
- B. Involuntary Terminations/Separations for Cause require Tremonton City to provide their terminating employees with written notification of due process. "At-Will" Involuntary Terminations (include those employees listed in Utah Code 10-3-1105(2)) do not require Tremonton City to provide their terminating employees with written notification of due process.
- C. A Resignation in Lieu of an Involuntary Termination Agreement (see Appendix Number 24 for details), signed by the employee and the Mayor or City Manager, may be utilized in negotiated terminations. A Resignation in Lieu of an Involuntary Termination Agreement does not require Tremonton City to provide their terminating employees with written notification of "due process".
- D. The following steps should be taken for Voluntary Retirements:
 - (1) Employees who desire retirement should notify Tremonton City three (3) months in advance.
 - (2) Tremonton City should communicate the status of each employee's retirement benefits. The employee is responsible for notifying Tremonton City, the administrator of the retirement program, and the appropriate state and federal regulatory agencies of their intent to retire. (CC mtg. 01/07/03)
 - (3) Tremonton City should carefully explain to the employee what the options are (such as COBRA and Retirement Plan Options).

- (4) Tremonton City should give the employee ample time to review the retirement plan.
- (5) Tremonton City should have the employee sign a release, or at least a declaration statement, to the effect that they are electing retirement of their own free will.

E. The following steps should be taken for Reductions in Force/Layoffs:

- (1) Determine whether Tremonton City is required to follow statutory guidelines related to the reduction in force/layoff. If Tremonton City is required to follow statutory guidelines then policy, procedure, and actual practice must comply with said guidelines. As per Utah Code 10-3-1105 employees may be terminated or transferred to a position with less remuneration with or without notice for any or no reason without any right to "due process", notice, explanation, or appeal in connection with reduction in force/layoffs.
- (2) If Tremonton City is facing a possible reduction in labor force, Tremonton City should explain the situation to its employees, advising them of the possibility that reductions in force/layoffs may become an economic necessity for Tremonton City.
- (3) In the selection of employees for Tremonton City's reduction in force/layoff, the following guidelines should be considered:
 - (a) Temporary/Emergency and probationary employees should be laid off first when ability to perform the work is determined to be equal by the Mayor, City Manager, or Department Head.
 - (b) Permanent employees should be the last to be laid off, when possible, in inverse order of their length of service when ability to perform the work is determined to be equal by the Mayor, City Manager, or Department Head.
 - (c) Before any reduction in force/layoff, Tremonton City should determine whether it is subject to the requirements of the Worker Adjustment and Retraining Notification Act, 29 U.S.C. 2101, et seq.
 - (d) If Tremonton City cannot give advanced notice of a reduction in force/layoff to the employee, two (2) weeks severance pay may be given in lieu of notice for a bona fide reduction in force/layoff.

- (4) Written reductions in force/layoffs notices may contain the following information:
 - (a) Statement of reason for layoff.
 - (b) Anticipated date of layoff.
 - (c) Tremonton City's option regarding employee placement in another position.

F. Outstanding Pay.

- (1) Arrange for distribution of any paychecks which may be due the employee, including pay for any hours worked but not paid, pay for unused, accrued annual leave (if applicable), or pay for vested sick leave (if applicable). (See also Section 18 2.H and 18 4.F of this manual.)
- (2) Under the Utah Labor Commission Wage law (<http://www.labor.commission.utah.gov/FAQ.html#Wage2>), the required timing of the final payment at termination is:
 - (a) A Voluntary Resignation. Within the next regular payroll cycle.
 - (b) An Involuntary Termination/Separation for Cause. Within twenty-four (24) hours of separation.

G. The terminating employee will return any supplies or equipment, which are the property of Tremonton City, to Tremonton City at termination prior to receiving their last paycheck. (See Appendix Number 25 for details)

4. COBRA. Any benefited employee that is separated from Tremonton City due to a qualifying event that would cause an individual to lose health coverage is entitled to a continuation of group health insurance coverage per the mandates of the Consolidated Omnibus Budget Reconciliation Act (COBRA) plan as stated in the Tremonton City COBRA Notification (see Appendix Number 26 for details). A Qualified Beneficiary generally is an individual covered by a group health plan on the day before a qualifying event who is an employee, the employee's spouse, or an employee's dependent child. In addition, any child born to or placed for adoption with a covered employee during the period of COBRA coverage is considered a qualified beneficiary.

A. Federal Public Law 99-272 (which became effective July 1, 1986 and is known as COBRA) requires that employers of 20 or more employees on more than fifty (50) percent of its typical business days in the previous calendar year offer a continuation of group insurance coverage to individuals who fall under one of the following "qualifying events":

- (1) Voluntary or involuntary termination of employment (other than for gross misconduct) for a maximum continuation period of eighteen (18) months.
 - (2) Reduction of work hours below eligibility requirement, for a maximum continuation period of eighteen (18) months.
 - (3) Dependent coverage terminated due to the death of the covered employee, for a maximum continuation period of thirty-six (36) months.
 - (4) Divorce or legal separation from the covered employee, for a maximum continuation period of thirty-six (36) months.
 - (5) Spouse or dependent of Medicare eligible employee, for a maximum continuation period of thirty-six (36) months after the date the employee becomes entitled to Medicare.
 - (6) Dependent child who ceases to be a dependent under the generally applicable requirements of the group plan, for a maximum continuation period of thirty-six (36) months.
- B. Under the Act, a qualifying individual is entitled to continued group insurance coverage identical to that which is provided to similarly situated beneficiaries to whom a qualifying event has not occurred. COBRA beneficiaries remain subject to the rules of the plan and therefore must satisfy all costs related to co-payments and deductibles, and are subject to catastrophic and other benefit limits. A change in the benefits under the plan for the active employees will also apply to qualified beneficiaries. Qualified beneficiaries must be allowed to make the same choices given to non-COBRA beneficiaries under the plan, such as during periods of open enrollment by the plan. Individuals who are entitled to continued benefits under COBRA guidelines are required to pay the entire premium required under the policy during the entire period of the continued coverage. The premium a qualifying individual will be required to pay may not exceed one hundred and two percent (102 %) of the applicable premium, for any period of continued coverage. Failure to pay the monthly premium will result in a cancellation of the insurance.
- C. The insurance benefits offered under the COBRA guidelines will be terminated if and when any of the following occur:
- (1) A qualifying beneficiary fails to pay the premium at the time it is required.
 - (2) A qualifying beneficiary begins coverage under another group insurance plan.
 - (3) At the expiration of a qualifying beneficiary's maximum continuation period.

- (4) A qualifying beneficiary becomes entitled to Medicare benefits after electing continuation coverage.
 - (5) A qualifying beneficiary engages in conduct that would justify the plan in terminating coverage of a similarly situated participant or beneficiary not receiving continuation coverage (such as fraud).
- D. The offer of continued insurance coverage under COBRA is made independent of any other offer to continue insurance that may be required under any applicable state law.
- E. A qualifying individual has sixty (60) days from the termination date of their current coverage to decide whether to continue their insurance coverage under this plan. If they decide to apply for the continued coverage, all due and owing premiums must be paid before coverage will be granted. If they fail to apply for coverage within the sixty (60) days, they will have waived their rights to continuation of coverage under the COBRA guidelines. They are not required to apply for or accept coverage under COBRA.